IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 4 OF 2005

Mr. Siraj Shaikh, major in age,
married, residing at Altinho, Panaji, Goa. ..... Petitioner.

V/s.

Mrs. Veronica Gonsalves e Menezes,
daughter of late Mr. Inacio Gonsalves,
residing at Altinho, Panaji, Goa. ..... Respondent.

Mr. V.R. Tamba, Advocate for the petitioner.

Mr. Aires Rodrigues, Advocate for the respondent.

CORAM : A.P. LAVANDE, J.

Date of residing the Order :
14.1.2005.

Date of pronouncing the Order :
20.1.2005.

O R D E R

By this petition, the petitioner challenges the order dated 20.11.2004, passed by the Ist ad hoc Addl. District Judge, Panaji in Civil Misc. Application No.310/2004, dismissing the application for condonation of delay filed by the petitioner. Heard Mr. Tamba for the petitioner and Mr. Rodrigues for the respondent.

2. The petitioner is the original defendant in Regular Civil Suit

No.16/2000/C filed by the respondent in the Court of Civil Judge, Jr. Division at Panaji. An ex parte decree was passed by the trial Court on 31.10.2002, directing the defendant to vacate and hand over possession of the suit premises to the plaintiff within three months. The defendant was further directed to pay to the plaintiff mesne profits at the rate of Rs.5,000/- per month from 1.2.2000 till the defendant is evicted and the vacant possession of the suit premises is handed over to the plaintiff. The defendant was also directed to pay arrears to the tune of Rs.25,000/- . Against the ex parte decree passed, an application for setting aside the decree along with an application for condonation of delay was filed by the petitioner. The trial Court condoned the delay, but refused to set aside the ex parte decree holding that no sufficient cause was made out for setting aside the ex parte decree. The trial Court passed the order dated 3.10.2003, refusing to set aside the ex parte decree. The plaintiff filed execution application No.4/2003 for execution of the decree passed in her favour. In the execution application, several applications were filed by the original defendant, inter alia, contending that the parties had settled the matter amicably and in the course of the said proceedings, Rs.2,00,000/- were paid. It is the case of the petitioner that in all he had paid Rs.2,88,000/- to the respondent herein. According to the petitioner, the amount was accepted by the respondent in view of the settlement arrived at between the parties and since the matter was settled between the parties, the petitioner did not prefer an appeal against the order dated 3.10.2003, refusing to set aside the ex parte

decree. According to the petitioner, since at one stage the respondent backed out of the settlement, he preferred the appeal against the order dated 3.10.2003, along with the application for condonation of delay of 173 days in filing the appeal. By the impugned order, the appellate Court has dismissed the application, holding that the petitioner herein has failed to show sufficient cause for condoning the delay and further holding that the application suffers from gross delay and exhibits negligence on the part of the applicant. The petitioner assails the said order passed by the appellate Court.

3. Mr. Tamba, the learned Counsel appearing for the petitioner has submitted that the appellate Court has exercised jurisdiction illegally while passing the impugned Order. He has further submitted that the appellate Court has failed to take into consideration the principles laid down by the Apex Court in the matter of condonation of delay and further submitted that the impugned order is patently illegal. The learned Counsel further submitted that since the appellate Court was dealing with an application for condonation of delay, the approach of the Court ought to have been liberal and considering the principles laid down by the Apex Court and this Court in several Judgments, the appellate Court ought to have condoned the delay and ought to have given an opportunity to the petitioner to agitate the matter on merits. In support of his submissions, learned Counsel relied upon the Judgment of the Apex Court in the case of ***Collector, Land Acquisition,***

Anantnag and anr. vs. Mst. Katiji and ors, (AIR 1987 SC 1353) and **S*onerao s/o. Sadashivrao Patil & anr. vs. Godawaribai w/o Laxmansing Gahirewar & ors.,*** **(**1999(2) All MR 507).

4. Per contra, Mr. Rodrigues, learned Counsel for the respondent submitted that the petitioner has suppressed the material facts and the findings given by the appellate Court while refusing to condone the delay, are based on the materials on record and as such, no interference is called for by this Court in exercise of the writ jurisdiction. The learned Counsel further submitted that the jurisdiction of this Court to interfere with the impugned order while exercising writ jurisdiction is very limited and having regard to the settled principles laid down by the Apex Court dealing with the powers of this Court to interfere with the orders passed by the lower Courts, this is not a fit case in which the impugned order deserves to be set aside.

5. I have considered the submissions made by the learned Counsel for both the sides. I have also gone through the Judgments relied upon by the learned Counsel appearing for the petitioner. No doubt the Courts should adopt a liberal approach while considering the applications for condonation of delay and the Court should not adopt pedantic approach. This proposition is too well settled. However, the question for consideration is whether the findings given by the appellate Court that the petitioner has failed to show sufficient cause and that the application

for condonation of delay suffers from gross delay and exhibits negligence on the part of the applicant, are contrary to the record and perverse ? Perusal of the records discloses that it is the case of the petitioner that the parties had entered into a settlement and payment during the execution proceedings was made in view of the settlement arrived at between the parties. Mr. Tamba submits that the amount so far paid by the petitioner to the respondent is Rs.2,88,000/- and the amount due under the said decree is over Rs.3,00,000/- . It is pertinent to note that the petitioner has no where disclosed as to what is the exact nature of settlement arrived at between the parties. The petitioner in the course of execution proceedings has stated that the parties have settled the dispute themselves, without disclosing the exact nature of settlement arrived at between the parties. It was absolutely necessary for the petitioner to disclose the exact nature of settlement arrived at, in view of the fact that it appears to be the case of the petitioner that the parties had entered into settlement by which the Decree-holder agreed not to execute the decree as passed against the petitioner. A heavy burden is cast upon the petitioner to disclose the exact nature of settlement which, according to the petitioner, was entered into between the parties. As stated above, the petitioner has not disclosed the exact nature of settlement arrived at. That being the position, the petitioner has failed to show any cause for not filing the appeal in time. It is also to be appreciated that upon expiry of the period of limitation, prescribed for filing an appeal, the decree/order becomes final and certain rights accrue

in favour of the party in whose favour the decree/order is passed. A bare perusal of the records discloses that the finding given by the appellate Court that the petitioner has failed to show sufficient cause for condoning the delay and that the application suffers from gross delay and exhibits negligence on the part of the applicant can, by no stretch of imagination, be said to be perverse, warranting interference by this Court in exercise of writ jurisdiction. It is well settled that the power of interference by this Court in exercise of writ jurisdiction is limited and such a power has to be exercised in the interest of justice. The conduct of a party who invokes writ jurisdiction of this Court is very much relevant and if the finding is given by the lower Court on the basis of the materials on record and the finding is not perverse, this Court would not be legally justified in setting aside the discretionary order passed by the Court. Having regard to the materials on record, I find that this is not a fit case in which the impugned order deserves to be set aside in exercise of writ jurisdiction and no fault can be found with the impugned order passed by the appellate Court.

6. In the result, therefore, I do not find any merit in this petition, which is summarily rejected with no order as to costs.

A .P. LAVANDE, J.

ssm.